

UNION BUDGET

2023-24

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Budget 2023

Proposed Changes in GST Law

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**Benefit of Composition Scheme extended to
Supply of Goods through E-commerce operator**

Benefit of composition scheme which was earlier not available to registered persons engaged in supplying **goods** through E-commerce operator is proposed to be extended to them by making following amendments in Section 10 of CGST Act, 2017 -

1. Words “goods or” to be **omitted** from clause (d) of sub-section (2) of Section 10. Amended sub-section (2) to read as under –

“(2) The registered person shall be eligible to opt under sub-section (1), if–

(d) he is not engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source under section 52;”

2. Similarly, words “goods or” to be **omitted** from clause (c) of sub-section (2A) of Section 10. Amended sub-section (2A) to read as under –

“(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent of the turnover in State or turnover in Union territory, if he is not –

(c) engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source under section 52;”

Commentary – By way of omitting words “goods or” in sub-section (2) & (2A), the restriction no longer applies to supplier of **goods** through E-commerce operators and now, these registered persons have the option to pay taxes under the Composition Levy.

Whereas restriction will continue to apply for such registered persons who are engaged in supply of **services** through E-commerce operator.

**Sale of warehoused goods before filing Bill of Entry
is now liable for reversal of ITC under Rule 42**

Background - Sub-section (2) of Section 17 of CGST Act provides that where a registered person is providing for taxable as well as exempted services and used inward supplies for effecting both taxable & exempted supplies, ITC for such inward supplies shall be allowed only to the extent of taxable supplies. Method of calculating such proportionate ITC is given in Rule 42 of CGST Rules.

Sub-section (3) of Section 17 of CGST Act along with Explanation thereof defines the scope of exempt supplies, meaning thereby, on what output supplies, ITC shall not be allowed (if inward supplies used entirely for providing exempt supplies) or allowed proportionately (if inward supplies used for providing both taxable & exempt supplies).

Scope of 'Exempt supplies' (on which ITC cannot be claimed or can be claimed proportionately as per Rule 42 of CGST Rules) is proposed to be broadened to include services inserted w.e.f. 01 February 2019 in Schedule III to CGST Act as under -

Words "except those specified in paragraph 5 of the said Schedule" in Explanation to sub-section (3) to be **substituted** to read as -

"(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation. – For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, ~~except those specified in paragraph 5 of the said Schedule.~~ except, -

- (i) the value of activities or transactions specified in paragraph 5 of the said schedule; and,*
- (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule."*

Para 8 in Schedule III to CGST Act was inserted *vide* CGST Amendment Act, 2018 w.e.f. 01 February 2019 and clause (a) thereof reads as *“Supply of warehoused goods to any person before clearance for home consumption”*.

Commentary - By way of insertion of abovementioned services in the scope of ‘exempt supplies’ for the purposes of availment of ITC under sub-section (2), in case any inward supplies is utilized for rendering these output services, ITC thereof is not admissible to the taxpayer and in case any inward supplies is used for rendering both taxable supplies and exempt supplies, ITC can be availed in proportionate formula given in Rule 42 of CGST Rules.

Though it needs to be noted that value of such activities or transactions in respect of supply mentioned in Para 8(a) of Schedule III will be notified/prescribed by the Government.

ITC not allowed on CSR Expenditure anymore

Section 17(5) of CGST Act which provides for **blocked credits** is proposed to be widened by way of **inserting** clause (fa) which reads as -

“(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of Companies Act, 2013;”

Commentary - Admissibility of ITC on CSR Expenditure mandatorily required to be incurred as per Section 135 of Companies Act is a matter of continuous debate around the industry from the erstwhile regime.

While on one hand, Hon'ble Tribunal has allowed CENVAT Credit of Service tax paid on CSR Expenditure as well as many Advance Rulings in GST era following the same proposition and allowing ITC thereof, on the other hand, Hon'ble Tribunal in another case has disallowed CENVAT Credit of Service tax paid on CSR expenditure. Ergo, the debates/apprehensions across the industry regarding admissibility of ITC on CSR Expenditure.

Now, Finance Bill 2023 has proposed to disallow said ITC by specifically including it in the category of blocked credits. However, it is pertinent to note that this is a prospective amendment.

Retrospective amendment - Section 23 to have overriding effect

Section 23 of CGST Act which provides for *persons who are not liable for registration* is proposed to be **substituted** to read as -

"23. Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24,-

(a) the following persons shall not be liable to registration, namely:-

- (i) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act, 2017;*
- (ii) an agriculturist, to the extent of supply of produce out of cultivation of land;*

(b) the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act."

Commentary - Section 23 has been made a non-obstante clause to have an overriding effect over Section 22 (Persons liable for registration) & Section 24 (Compulsory registration in certain cases), meaning thereby, if a person is required to get registered under either Section 22 or 24 but specifically exempted from taking registration under Section 23, such person is not required to take registration under GST laws by virtue of Section 23.

**Last date to file GSTR-1, GSTR-3B, Annual Return (GSTR-9 & 9C)
and TCS Return (GSTR-8) notified**

Commentary – A sunset date is proposed to be inserted to provide that GSTR-1, GSTR-3B, GSTR-9, GSTR-9C and GSTR-8 can be filed only on or before such sunset date and after such date, taxpayer won't be allowed to file these returns anymore.

Such sunset date is notified as 3 years from the due date of furnishing the relevant return. Also, Government is empowered to notify such persons or class or persons who can file these returns even after the sunset date, meaning thereby, extension in this sunset date can be provided by the Government.

1. Sub-section (5) is proposed to be **inserted** in Section 37 to read as follows -

“(5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after the expiry of a period of three years from the due date of furnishing the said details:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said details.”

2. Sub-section (11) is proposed to be **inserted** in Section 39 to read as follows -

“(11) A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of three years from the due date of furnishing the said return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period, even after the expiry of the said period of three years from the due date of furnishing the said return.”

3. Sub-section (2) is proposed to be **inserted** in Section 44 to read as follows -

“(2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return:

Provided that the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return.”

4. Sub-section (15) is proposed to be **inserted** in Section 52 to read as follows -

“(15) The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said period of three years from the due date of furnishing the said statement.”

Onus to conduct due diligence of suppliers lies upon E-commerce operator now

Sub-section (1B) is proposed to be **inserted** in Section 122 to provide for penalty upon E-commerce operator and shall read as -

“(1B) Any electronic commerce operator who–

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act, shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.”

Commentary - E-commerce operator has to be more diligent now in engaging suppliers on its platform. E-commerce operator need to conduct due diligences of unregistered suppliers to check whether they are liable to register under GST laws. Similarly, E-commerce operator needs to build systems so that composition taxpayers are restricted to make inter-state suppliers.

**Decriminalization of certain offences and
increase in monetary limit for initiating prosecution proceedings**

Presently, sub-section (1) of Section 132 of the CGST Act, 2017 prescribes certain offences [clause (a) to (l)] which are liable to be punished by way of imprisonment based on monetary threshold [clause (i) to (iv)].

1. The Finance Bill, 2023 has proposed to decriminalize below mentioned offences by **omitting** offences listed out in clauses (g), (j) and (k) from sub-section (1) Section 132 of the CGST Act, 2017 as under -

“(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: -

~~(g) obstructs or prevents any officer in the discharge of his duties under this Act~~

~~(j) tampers with or destroys any material evidence or documents;~~

~~(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or”~~

2. Simultaneous amendments to give effect to above amendment is proposed to be made in various other clauses of Section 132(1) of CGST Act as under -

- a. Clause (l) of sub-section (1) of Section 132 of the GST Act, 2017 is proposed to be amended to **substitute** words as under -

“(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: -

(l) attempts to commit, or abets the commission of any of the offences mentioned in ~~clauses (a) to (k)~~ clauses (a) to (f) and clauses (h) to (i) of this section,”

- b. Clause (iv) of sub-section (1) of Section 132 of the GST Act, 2017 is also proposed to be amended to **omit** words as under -

“(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: -

.....

shall be punishable--

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) ~~or clause (g) or clause (j)~~, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.”

3. In a similar manner, following parallel amendments are proposed to be made in Section 138 (Compounding of Offences) to remove references to clause (g), (j) & (k) of Section 132(1) therefrom.

Clause (a) of proviso to sub-section (1) of Section 138 is proposed to be amended by way of **substitution** of words and clauses (b) & (e) are to be **omitted** as follows -

“(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed :

Provided that nothing contained in this section shall apply to –

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), ~~(h), (i) and (l)~~ of sub-section (1) of section 132 ~~and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;~~*
- (b) ~~a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;~~*
- (c)*

(d)

(e) ~~a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and~~

Commentary - Three offences which were less grave in nature as compared to other offences have been sought to be decriminalized, i.e., no imprisonment will follow in case of these offences.

4. **Background** - At present, the monetary threshold given in clauses (i) to (iv) for initiating prosecution proceedings in respect of offences listed in clauses (a) to (l) is as follows -

Where amount of tax evaded or ITC wrongly availed or utilized or refund wrongly taken is -

- (a) More than Rs. 5 crores - Imprisonment upto 5 years with fine
- (b) More than Rs. 2 crores but less than Rs. 5 crores - Imprisonment upto 3 years with fine
- (c) More than Rs. 1 crores but less than Rs. 2 crores - Imprisonment upto 1 year with fine

Whereas in case of committing or abetting to commit any prescribed offence (specified clauses) - Imprisonment upto 6 months or fine or both.

Commentary - However, the monetary slab of Rs. 1-2 crore is proposed to be amended to excluded cases other than those involving fake/bogus invoices, meaning thereby, in case of fake invoices, the aforementioned slabs/punishment remains the same while in case of offences, other than fake invoices, imprisonment can be initiated if value is more than Rs. 2 crores.

For the same, words “any other offence” in clause (iii) of sub-section (1) of Section 132 to be **substituted** by words “an offence specified in clause (b)”. Amendment clause (iii) to read as under -

“(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: -

.....

shall be punishable–

(iii) in the case of ~~any other offence~~ *an offence specified in clause (b) where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;*”

Section 132 after aforementioned amendments will read as follows -

“Section 132 Punishment for Certain offences

(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: -

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

*(g) *Omitted**

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals

with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

*(j) *Omitted**

*(k) *Omitted**

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) to (i) of this section,

shall be punishable–

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of an offence specified in clause (b) where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both."

Fake/Bogus Invoices cases cannot be compounded anymore

Background - Section 138 of CGST Act provides for compounding of offences on payment of such compounding amount and in the manner as prescribed. However, certain offences cannot be compounded which are listed in proviso to sub-section (1).

Amendment is proposed *via* Finance Bill, 2023 to exclude the cases of fake/bogus invoices from the option of compounding of offences. Clause (c) of proviso to sub-section (1) to be **substituted in entirety** to read as -

“(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed :

Provided that nothing contained in this section shall apply to –

(c) ~~a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force~~ a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132;”

Therefore, there will be no option to compound offences wherein issue of fake/bogus invoices is involved post this amendment.

Reduction in Compounding Fee

Section 138 of CGST Act provides for compounding of offences on payment of such compounding amount given in sub-section (2) as prescribed and in the manner as prescribed in Rule 162 of CGST Rules. Compounding fee as prescribed in sub-section (2) of Section 132 is also proposed to be reduced as follows -

Compounding fee at present -

Minimum fee - Higher of Rs. 10,000 or 50% of tax involved

Maximum fee - Higher of Rs. 30,000 or 150% of tax involved

Proposed Compounding fee -

Minimum fee - 25% of tax involved

Maximum fee - 100% of tax involved

Amended sub-section (2) shall read as follows -

“(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ~~ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent of the tax, whichever is higher~~ twenty-five per cent. of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved.”

**Retrospective amendment for non-taxable supplies notified in Schedule III
and disallowing refund of taxes already paid**

Schedule III to the CGST Act is being proposed to be amended to give retrospective applicability to Para 7, 8 (a) and 8 (b) along with Explanation 2 of the said Schedule, with effect from 01 July 2017, so as to treat the activities/ transactions mentioned in the said paragraphs as neither supply of goods nor supply of services w.e.f., 01 July 2017 itself.

Para 7, 8(a), 8(b) & Explanation 2 in Schedule III to CGST Act was inserted *vide* Central Goods and Services Tax (Amendment) Act, 2018 w.e.f., 01 February 2019 and thus, such benefit of non-taxability was prospective in nature. Para 7, 8 & Explanation 2 to Schedule III reads as follows -

***“Schedule III: ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED
NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES***

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

.....

Explanation 2. – For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962)."

Commentary - Now, *vide* Finance Bill, 2023, these supplies are proposed to be non-taxable with retrospective effect from 01 July 2017 to put an end on ongoing litigations or prospective litigations in cases wherein no tax is paid by any taxpayer on such supplies.

However, it is also provided in Finance Bill, 2023 that where the tax has already been paid in respect of such transactions/ activities during the period from 01 July 2017 to 31 January 2019, no refund of such tax paid shall be available.

Scope of OIDAR services widened

Following amendments are proposed to be carried out in Section 2 of the IGST Act -

1. Definition of “non-taxable online recipient” given in sub-section (16) proposed to be **substituted in entirety** to broaden its ambit and shall read as under -

“Section 2: Definition

(16) “non-taxable online recipient” means any ~~Government, local authority, governmental authority, an individual or any other person not registered and unregistered person~~ receiving online information and database access or retrieval services ~~in relation to any purpose other than commerce, industry or any other business or profession,~~ located in taxable territory.

Explanation.- For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017;”

Commentary - Section 14 of the IGST Act states that in case of supply of online information and database access retrieval (“OIDAR”) services by any person located in a non-taxable territory and received by a non-taxable online recipient located in a taxable territory, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.

Now after proposing to remove the condition of receipt of OIDAR services for purposes other than commerce, industry or any other business or profession, the supplier of OIDAR services located in a non-taxable territory shall be the person liable for paying integrated tax even if such services are received for the purposes of commerce, industry, business or profession.

Further, it also seeks to clarify that the persons registered solely in terms of clause (vi) of Section 24 of CGST Act, i.e., persons who are compulsorily required to take registration for the sole purpose of deducting tax at source (TDS), shall be treated as unregistered person for the purpose of the said clause.

2. Scope of OIDAR services is proposed to be widened by way of **omitting** the words “essentially automated and involving minimal human intervention” from definition of OIDAR services given in sub-section (17) as under -

“Section 2: Definition

(17) “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply ~~essentially automated and involving minimal human intervention~~ and impossible to ensure in the absence of information technology and includes electronic services such as, –

- (i) advertising on the internet;*
- (ii) providing cloud services;*
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;*
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*
- (v) online supplies of digital content (movies, television shows, music and the like);*
- (vi) digital data storage; and*
- (vii) online gaming;”*

Commentary – For an OIDAR Service, a service must have to cumulatively qualify following two conditions and in the absence of any one condition, such service will not be regarded as OIDAR services.

- The services shall be provided, essentially by use of information technology over the internet or an electronic network and is impossible to provide in absence of Information Technology; and,
- The nature of such services renders their supply essentially automated and involving minimal human intervention.

To curb the litigation in relation to fulfilment of second condition, it has been proposed that second condition for the services to qualify as OIDAR service, as stated above, shall be omitted and scope of OIDAR services is widened.

**Place of Supply of Transport of Goods restricted
irrespective of destination of goods**

Amendment is proposed to be brought in sub-section 8 of Section 12 of the IGST Act, by way of **omission** of proviso to sub-section (8) of section 12 of the IGST Act, after which sub-section (8) shall read as –

“Section 12: Place of supply of services where location of supplier and recipient is in India.

(8) The place of supply of services by way of transportation of goods, including by mail or courier to,--

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

~~*Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.”*~~

Commentary - Sub-section (8) of Section 12 of the IGST Act talks about the place of supply provisions in respect of supply of services by way of transportation of goods, including by mail or courier, where location of supplier and recipient is in India.

Earlier, as per proviso to sub-section (8) where the destination of goods was outside India, then place of supply of such transportation services shall fall outside India. However, now it has been proposed to omit proviso to sub-section (8) of section 12 of the IGST Act to specify that irrespective of destination of the goods, place of supply shall fall in India since the supplier of services and recipient of services are both located in India.

Omission of said proviso will help remove ambiguity in cases where place of supply of services, as per the proviso to sub-section (8) of section 12 of IGST Act, was falling in the concerned foreign destination and not the State where the recipient is registered under GST and accordingly, availment of ITC was under debatable.

In order to clarify such issue, recently, Circular bearing no. 184/16/2022 - GST dated 27 December 2022 was brought which stated that ITC shall be admissible to the recipient even where POS is falling outside India or outside the state where such recipient is situated.

Consent based sharing of information furnished by taxable person

Finance Bill, 2023 has proposed to **insert** Section 158A to the CGST Act, 2017 for allowing sharing of information or details furnished by a taxable person on the GST common portal with such other systems as may be notified by government. Section 158A of CGST Act, 2017 shall read as follows -

“158A Consent Based Sharing of information furnished by a taxable person


(1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of subsection (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely: --

- (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;*
- (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;*
- (c) such other details as may be prescribed.*

(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of –

- (a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and*
- (b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed.*

(3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.”



Commentary – Presently, no such mechanism was given in the CGST Act, 2017 which allow the GST portal to share information furnished by a registered person with any other systems by taking consent from the person whose information is to be shared. However, with this proposed amendment, Government will suggest a mechanism through which the details shared by a registered person on the GST Common portal can be shared with other systems from the government.

Such system with which information can be shared will be notified by the Government separately.

**Amendment in condition to make payment in 180 days
to align the language of law with practical working**

Background – Second & Third Proviso to sub-section (2) of Section 16 of CGST Act, 2017 provides that the payment of inward supplies (along with tax thereon) needs to be made within 180 days of issuance of invoice. However, if such payment is not made within stipulated time period of 180 days, amount of ITC availed on such invoice by the recipient shall be added to recipient's output tax liability along with Interest thereon. Further, recipient shall be entitled to avail such ITC when payment (of taxable value & tax) is made by the recipient to the supplier.

Minor changes are proposed to be made in second & third proviso to align the same with return-filing system.

1. Words “added to his output tax liability, along with Interest thereon” to be **substituted** by “paid by him along with interest thereon” in second proviso and amended second proviso shall read as under -

“Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be ~~added to his output tax liability, along with interest thereon~~ paid by him along with interest thereon, in such manner as may be prescribed:”

2. Words “made by him” to be **substituted** by “to the supplier” in third proviso and amended third proviso shall read as under -

“Provided also that the recipient shall be entitled to avail of the credit of input tax on payment ~~made by him to the supplier~~ of the amount towards the value of supply of goods or services or both along with tax payable thereon.”

Amendment in Refund Provisions

1. Amendment proposed in sub-section (6) of Section 54 of CGST Act merely to align the same with present scheme of availment of ITC on self-assessment basis.

Words “excluding the amount of input tax credit provisionally accepted” to be **omitted** in sub-section (6) of Section 54 to read as -

“(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent of the total amount so claimed, ~~excluding the amount of input tax credit provisionally accepted~~, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub- section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.”

2. Interest on delayed refunds will be granted subject to certain conditions & restrictions and in the manner which will be prescribed. Amended Section 56 of CGST Act, after **substitution**, to read as follows -

“56. If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund ~~from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax~~ for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed:”

Amendment is brought to empower Government to prescribe manner in which Interest on delayed refunds will be computed. Further, conditions & restrictions subject to which Interest on delayed refunds will be granted can also be prescribed by the Government now.

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